

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35109

STATE OF IDAHO,)	2008 Unpublished Opinion No. 717
)	
Plaintiff-Respondent,)	Filed: November 26, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
KEITH ROBERT WELLS,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Gregory M. Culet, District Judge.

Order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Diane M. Walker, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

PER CURIAM

Keith Robert Wells was convicted of burglary, Idaho Code § 18-1401. The district court imposed a unified seven-year sentence with two years determinate, suspended the sentence and placed Wells on probation. Subsequently, Wells admitted to violating several terms of the probation, and the district court consequently revoked probation, ordered execution of the sentence, and retained jurisdiction. Upon completion of the retained jurisdiction period, Wells was placed on probation. Wells again violated his probation and the district court revoked his probation and executed the original sentence. Wells filed an Idaho Criminal Rule 35 motion, which the district court denied. Wells appeals from the denial of his Rule 35 motion.

Wells' appeal is timely from the order denying his Rule 35 motion for reduction of the sentence. A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v.*

Allbee, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). “An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information.” *Id.* Because Wells presented no new information in support of his Rule 35 motion, review of the sentence by this Court is precluded. For the foregoing reasons, the district court’s denial of Wells’ Rule 35 motion is affirmed.